

\*E-Filed 7/28/10\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TUNG THANH NGUYEN,

No. C 10-0666 RS (PR)

Petitioner,

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS**

v.

V. S. CULLEN, Warden,

Respondent.

**INTRODUCTION**

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the petition is DENIED.

**BACKGROUND**

In 1994, an Orange County Superior Court jury convicted petitioner of first degree murder and robbery. The trial court sentenced petitioner to twenty-five years to life in state prison. In 2008, the Board of Parole Hearings (“Board”) found petitioner unsuitable for parole on grounds that he “poses a present risk of danger to society or a threat to public safety if released from prison.” (Pet., Ex. A at 98.) In response to the Board’s decision, petitioner sought, though was denied, relief on state collateral review. (Pet. at 6–7.) This

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1 federal habeas petition followed.

2 In reaching its decision, the Board considered the facts of the commitment offense. In  
3 April 1993, petitioner, Duc Truong, Khuong Quoc Vo, and Johnny Dung Nguyen<sup>1</sup>  
4 participated in the stabbing death of Tuan Troung (“the victim”), a friend turned enemy of  
5 Vo. It appears that these men went to the victim’s hotel room, and, after gaining entry, Vo  
6 punched the victim in the chest, knocking him on the bed, and then jumped on him and  
7 placed a knife to his throat. His accomplices, including petitioner, brandished knives at the  
8 other occupants of the hotel room. Truong then stabbed the victim in his left inner thigh.  
9 Petitioner warned his accomplices that the police were driving by the hotel, and they shut off  
10 the lights as a consequence. The group waited in the dark for roughly forty minutes,  
11 allowing the victim to bleed to death, and then Vo, Truong, and petitioner left the hotel room,  
12 with Vo telling the remaining occupants that Truong and petitioner would kill them if the  
13 occupants left earlier than fifteen minutes after Vo left. (Pet., Ex. A at 18–23 & 99.)  
14 Petitioner apparently never stabbed the victim, but admitted during police interrogation, and  
15 at the parole hearing, that he held knives to the throat of another occupant in a “scissor hold”  
16 with one knife at the front of the neck and the second at the back, so as to prevent the  
17 occupant from interfering with the attack on the victim. (*Id.* at 30–31, 33–34.) The police  
18 found petitioner, Truong, and Vo in a vehicle in the parking lot of the hotel. The vehicle  
19 contained two butcher knives, and a hunting knife. Truong and Vo had dried blood on their  
20 hands and clothing. (*Id.* at 18–19.) The Board expressed concern that the motive for the  
21 crime remains unclear, with possibilities ranging from a dispute over a monetary debt, to  
22 simple dislike between Vo and the victim. (*Id.* at 99.)

23 In addition to the circumstances of the commitment offense, the Board cited as factors  
24 in its decision petitioner’s criminal history, his behavior in prison, his social history, and his  
25 psychological report. At sixteen, petitioner was convicted of assault. (*Id.* at 99.) While in  
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27 <sup>1</sup> Not petitioner’s relation.  
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1 prison in 2000, petitioner, a native of Vietnam, participated in a prison race riot, and received  
2 a four month term of imprisonment in the secured housing unit. (*Id.* at 64–65.) Petitioner  
3 also received three citations for minor misbehavior, the last one in 2005. (*Id.* at 76.) In  
4 regard to his social history, petitioner admitted that he dropped out of school while a  
5 teenager. (*Id.* at 27.) Petitioner’s psychological report stated that he presented a “very low”  
6 risk of committing violence. (*Id.* at 78.) Also, petitioner lacked any parole plans for life in  
7 Vietnam, to which country he likely will be, as a non-U.S. citizen felon, deported if released.  
8 (*Id.* at 83.) In light of all these factors, the Board concluded that petitioner posed an  
9 unreasonable threat to public safety and denied him parole. (*Id.* at 98.) As grounds for  
10 federal habeas relief, petitioner alleges that the Board’s decision was not supported by  
11 sufficient evidence of petitioner’s current dangerousness.

#### 12 STANDARD OF REVIEW

13 This court may entertain a petition for writ of habeas corpus “in behalf of a person in  
14 custody pursuant to the judgment of a State court only on the ground that he is in custody in  
15 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).  
16 The petition may not be granted with respect to any claim that was adjudicated on the merits  
17 in state court unless the state court’s adjudication of the claim: “(1) resulted in a decision that  
18 was contrary to, or involved an unreasonable application of, clearly established Federal law,  
19 as determined by the Supreme Court of the United States; or (2) resulted in a decision that  
20 was based on an unreasonable determination of the facts in light of the evidence presented in  
21 the State court proceeding.” 28 U.S.C. § 2254(d).

22 “Under the ‘contrary to’ clause, a federal habeas court may grant the writ if the state  
23 court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of  
24 law or if the state court decides a case differently than [the] Court has on a set of materially  
25 indistinguishable facts.” *Williams (Terry) v. Taylor*, 529 U.S. 362, 412–13 (2000). “Under  
26 the ‘unreasonable application’ clause, a federal habeas court may grant the writ if the state  
27 court identifies the correct governing legal principle from [the] Court’s decision but  
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1 unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413. "[A]  
2 federal habeas court may not issue the writ simply because that court concludes in its  
3 independent judgment that the relevant state-court decision applied clearly established  
4 federal law erroneously or incorrectly. Rather, that application must also be unreasonable."  
5 *Id.* at 411. A federal habeas court making the "unreasonable application" inquiry should ask  
6 whether the state court's application of clearly established federal law was "objectively  
7 unreasonable." *Id.* at 409.

### 8 DISCUSSION

9 Petitioner claims that the Board's decision violated his right to due process because it  
10 was not based on "some evidence" that he currently poses an unreasonable risk to public  
11 safety. Due process requires that the Board's decision to deny a California prisoner parole be  
12 supported by "some evidence" of current dangerousness. *Hayward v. Marshall*, 603 F.3d  
13 546 (9th Cir. 2010); *see also Pearson v. Muntz*, No. 08-55728, 2010 WL -- (9th Cir. May 24,  
14 2010) (per curium). Accordingly, in reviewing federal habeas claims that a California  
15 prisoner was denied parole in violation of due process, courts must "decide whether the  
16 California judicial decision approving the governor's [or the parole board's] decision  
17 rejecting parole was an "unreasonable application" of the California "some evidence"  
18 requirement, or was "based on an unreasonable determination of the facts in light of the  
19 evidence." *Hayward*, 604 F.3d at 562–63.

20 The commitment offense alone does not always provide evidence that a petitioner  
21 poses a current threat to public safety. *Id.* at 562. The offense does not establish current  
22 dangerousness "unless the record also establishes that something in the prisoner's pre- or  
23 post-incarceration history, or his or her current demeanor and mental state" supports an  
24 inference of dangerousness. *Id.*, citing *In re Lawrence*, 44 Cal. 4th 1181, 1214 (Cal. 2008).

25 Here, the record shows that there was "some evidence" to support the state court's  
26 approval of the Board's parole denial. First, the circumstances surrounding the commitment  
27 offense suggest that petitioner lacks sufficient judgment, participating in a highly violent act  
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1 with little encouragement. Second, the record establishes that petitioner’s pre- and post-  
2 conviction history supports an inference of current dangerousness — in particular his  
3 conviction for assault prior to the occurrence of the commitment offense, his citation for  
4 participation in a prison riot, and his being rated as having a low potential for future violence.  
5 While a rating of low is not conclusively prohibitive, it does constitute some evidence of  
6 current dangerousness in addition to the commitment offense. *See Hayward*, 603 F.3d at  
7 570–71 (Berzon, J., concurring).

8 It is reasonable to infer from this record of past violence and recent misbehavior that,  
9 if released, petitioner currently poses an unreasonable risk of danger to society, or a threat to  
10 public safety. Because the Board’s decision is supported by sufficient evidence in the record,  
11 including circumstances other than those of the commitment offense, petitioner’s claim that  
12 the Board’s decision was unsupported by sufficient or “some” evidence of current  
13 dangerousness is DENIED. In sum, the state court’s approval of the Board’s decision,  
14 therefore, was not an “unreasonable application” of the California “some evidence”  
15 requirement, nor was it “based on an unreasonable determination of the facts in light of the  
16 evidence.”

### 17 CONCLUSION

18 The state court’s denial of petitioner’s claims did not result in a decision that was  
19 contrary to, or involved an unreasonable application of, clearly established federal law, nor  
20 did it result in a decision that was based on an unreasonable determination of the facts in  
21 light of the evidence presented in the state court proceeding. Accordingly, the petition is  
22 DENIED.

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1 A certificate of appealability will not issue. Petitioner has not shown “that jurists of  
2 reason would find it debatable whether the petition states a valid claim of the denial of a  
3 constitutional right and that jurists of reason would find it debatable whether the district court  
4 was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

5 The Clerk shall enter judgment in favor of respondent, and close the file.

6 **IT IS SO ORDERED.**

7 DATED: July 28, 2010

  
RICHARD SEEBORG  
United States District Judge

United States District Court  
For the Northern District of California